the plaintiff had suffered a loss of rental on the land. I agree with the decision of the senior assistant registrar and I do not wish to disturb her finding.

Datin Peggy Taylor claimed that she suffered these losses as a result of the non-performance of the contract dated 24 March 1976 in discharging the title deed of the Cheras land. As already stated, the court had earlier ruled that there was a breach of contract in the present case and the contract breaker was the defendant. In my opinion, the plaintiff had suffered losses and all these losses arose naturally in the usual course of things from the breach of contract itself. See *Hadley* v *Baxendale*.[1] In other words these were all losses, which flowed from the breach of contract itself: *Tan Chin Kim Sawmill and Factory Sdn Bhd* v *Lindeteves-Jacoberg (M) Sdn Bhd*.[8] In order to make a particular loss recoverable it is not necessary for the plaintiff to prove that the defendant could, as a reasonable man, foresee that a breach must necessarily result in that particular loss: *Victoria Laundry (Windsor) Ltd* v *Newman Industries Ltd*[4] at p 540. Lord Reid, in his speech in the *Koufos* case at p 390 stated, 'For the best part of a century it has not been required that the defendant could have foreseen that a breach of contract must necessarily result in the loss which has occurred.'

The senior assistant registrar, after hearing the evidence of witnesses and after considering the documentary evidence had assessed damages in the sum of $181,500. This figure is the total sum of the losses mentioned above. In my opinion the plaintiff is entitled to claim the losses she and her husband had suffered. I think the senior assistant registrar was right in arriving at a figure of $181,500 and I do not wish to disturb her finding on assessment of damages.

In the circumstances, I dismiss the appeal with costs to be taxed. I confirm the final judgment entered by the senior assistant registrar against the defendant on 28 July 1981 in the sum of $181,500 with costs to be taxed and to be paid by the defendant to the plaintiff. I order that the defendant pay interest at the rate of 8% pa from the date of final judgment, that is, 28 July 1981 to date of realization.

Order accordingly.

Solicitors: *Skrine & Co*; *Shearn Delamore & Co*.

Reported by *PS Ranjan*

Clarence D Bongkos Malakun v The Returning Officer & Ors

HIGH COURT (KOTA KINABALU) – ELECTION PETITION NO 5 OF 1985
CHONG SIEW FAI J
30 JUNE 1988

Election – Petition lodged to challenge disqualification of petitioner from being a member of the Sabah Legislative Assembly by virtue of his holding of an office of profit – Whether such petition had abated or dropped by reason of the dissolution of the State Legislative Assembly – Election Offences Act 1954 – Election Petition Rules 1954, rr 27 to 29

The petitioner filed an election petition challenging the rejection of his electoral nomination in the election to the Sabah State Legislative Assembly in April 1985. At the hearing of the petition, the third respondent, who was a candidate in the election, raised a preliminary objection, on the grounds that (i) the petition had abated or dropped by reason of the dissolution of the State Legislative Assembly; (ii) having regard to the election law, in particular, the Election Offences Act 1954, upon such dissolution, the jurisdiction of the election court was forfeited by operation of law and (iii) assuming that the court had jurisdiction to hear the petition and to declare the petition void, dire consequences would follow as under the Election Offences Act 1954 it was mandatory that notice of election be given within one month by the Election Commission and yet no fresh by-election could be held as an election had already been held.

Held, dismissing the preliminary objection:

(1) There is no statutory provision for the abatement of the petition on the dissolution of the Assembly. The provisions relating to the abatement or otherwise of an election petition are contained in rr 27 to 29 of the Election Petition Rules 1954 from which it could be seen that once an election petition is presented to the High Court, it will not necessarily abate or fail by reason of the death of the petitioner or any of the respondents or by their ceasing to have any further interest in it. It was clear that the intention is to prevent the election process on which the democratic system of government is based from being abused or misused by any candidate and to ensure that trial of an election petition would not be frustrated by collusion between parties to the petition or by their deaths.

(2) The giving of notice of election under s 36 of the Election Offences Act 1954 is not mandatory and the words used in that section had to be given their ordinary and natural meaning.

(3) The English authorities on the abatement of a petition on the dissolution of Parliament have no application in the Malaysian context having regard to the statute law and circumstances prevailing in Malaysia which govern the practice and procedure thereof.

Cases referred to

1 *Carter & Anor* v *Mills* (1873-74) LR 9 CP 117 (distd)
2 *Marshall* v *James* (1873-74) LR 9 CP 702 (distd)
3 *Shivdev Singh* v *Dara Singh & Ors* [1953] 5 ELR 496 (refd)
4 *Sheo Sadan Singh* v *Mohan Lal Gautam* [1969] (1) SCC 408 (folld)
5 *Yong Kuan Teik* v *Devan Nair* [1965] 2 MLJ 162 FC (folld)
6 *Loknath Padhan* v *Birendra Kumar Sahu* [1974] 1 SCC 526 (distd)

7 *Re Perting Timor Election (No 2)* [1962] MLJ 333 (distd)
8 *Tunku Abdullah* v *Ali Amberan* [1971] 1 MLJ 25 (distd)
9 *Danson Gaban* v *Zulkifle bin Majun & Ors* [1982] 1 MLJ 315 (distd)

Legislation referred to
Election Offences Act 1954 ss 33(1), 35, 36, 42
Election Petition Rules 1954 rr 27 to 29
Elections (Conduct of Elections) Regulations 1981 First Schedule Form 2A
Federal Constitution art 118
Houses of Parliament (Privileges and Powers) Ordinance 1952 ss 33(1), 34
Legislative Assembly (Privileges, Immunities and Powers) Enactment 1963 s 6
Members of the Administration and the Legislative Assembly (Remuneration) Enactment 1981 s 8
Rules of the High Court 1980
Rules of the Supreme Court 1980
Parliamentary Elections Act [UK], s 26
Representation of the People Act 1949 [UK], s 137(2)

Harry Elias and *Williamson Yahyu* for the petitioner.
Philip Lee for the third respondent.

Cur Adv Vult

Chong Siew Fai J: At the commencement of the trial of this election petition against the third respondent on 25 May 1988, counsel for the third respondent raised a preliminary point contending that this petition had abated by reason of the fact that the Legislative Assembly of the State of Sabah was dissolved on 26 February 1986 and consequently this court, as the election court, has no jurisdiction to hear this petition.

Petitioner's nomination rejected

This petition arose out of the election of the Sabah State Legislative Assembly held on 21 April 1985 and concerned the constituency of Moyog. Three persons appeared as intended candidates at the nomination centre on the nomination day. They were: (i) the petitioner, (ii) one Datuk Conrad Mojuntin, the second respondent and (iii) the third respondent. As a result of objections by the second and the third respondents, the returning officer (who was the first respondent in this petition) upheld the objection to the effect that the petitioner contravened art 17(1) of the Constitution of Sabah in that he (the petitioner) held an office of profit as an employee of the government and was disqualified from being a member of the Sabah Legislative Assembly. Consequently, in the election that ensued on 21 April 1985 only two candidates contested, ie the second respondent and the third respondent; and the third respondent was returned.

Petition

This petition challenging the rejection of the petitioner's nomination by the first respondent as the returning officer was presented to the High Court in Kota Kinabalu on 11 June 1985. A copy thereof was served on the third respondent on 24 June 1985.

The petition has a rather arduous passage before the date of 25 May 1988. In view of the preliminary objection raised and of the lapse of nearly three years from 11 June 1985 (the date of presenting the petition) to 25 May 1988, a brief account of what had occurred in-between may not be out of place. The petition came up for mention on 11 January 1986. It was mentioned (as opposed to being tried) because there were eight other cases brought up before me on that day four of which incidentally also concerned election matters. On that date (ie 11 January 1986) erstwhile counsel for the petitioner indicated in court that he had instructions to withdraw the petition and that steps were being taken to prepare the necessary papers for withdrawal. The hearing was adjourned to 4 April 1986. There was then a change of mind. On 4 April 1986, I was informed that the petition was to proceed and the matter was further adjourned to 15 October 1986. On 15 October 1986, the trial was again adjourned to 10 June 1987, this time at the request of the advocate for the first respondent (the returning officer) on the grounds that it was indicated to him that the petition would be withdrawn and that since it was not, the case for the first respondent would be handled by counsel from Kuala Lumpur. Owing to some official matters requiring my presence in Kuala Lumpur, the hearing on 10 June 1987 was rescheduled to 8 September 1987 on which date it was discovered that the notice of the rescheduled hearing of the case had not been served on the third respondent and the petition was adjourned to 15 March 1988. On all the dates abovementioned, the third respondent did not appear in court despite a copy of the petition having been served on him.

On 15 March 1988, the first respondent conceded to the petition and the attendances of him and his counsel in court thereafter were dispensed with. The name of the second respondent was, by consent of the petitioner, struck out. There remained, therefore, the third respondent who appeared in court in connection with this petition, for the first time. As stated earlier, he was the returned candidate at the relevant State Legislative Assembly election for the constituency of Moyog in 1985. He asked for adjournment of the hearing of this petition on the ground that he wished to engage counsel to contest the petition. I acceded to his request, not without some reluctance, since he had chosen to remain obscure or indifferent all the while prior to 15 March 1988. However, since it was a matter that might affect him, I allowed the trial to be adjourned to 25 May 1988 on which date this preliminary objection referred to above was raised. Each adjournment, it may be noted, meant a few months before the petition was called again because I had to come from Sibu where I was stationed and because of the business of the court.

It may perhaps be also pointed out that since the Assembly was dissolved on 26 February 1986, apart from the appearance in court on 11 January 1986 which, as stated earlier, was for mention, all the subsequent appearances took place after the dissolution of the Assembly. A fresh election had in fact been held.

Points of submissions by counsel

For the third respondent it was contended, in brief, that having regard to such cases as *Carter & Anor* v *Mills*,[1] *Marshall* v *James*[2] and *Shivdev Singh* v *Dara Singh & Ors*,[3] the present election petition had abated or dropped by reason of the dissolution of the State Legislative Assembly, that having regard to the election law including the Election Offences Act 1954, in particular the functions of the election judge, upon the dissolution of the State Legislative Assembly, the jurisdiction of the election court was forfeited by operation of law, and that assuming that the court was to hear this petition and to declare the petition void, dire consequences would follow in that under s 36 of the Election Offences Act 1954 it was mandatory that the Election Commission give notice of election within one month and yet was unable to hold a fresh by-election since a State Legislative Assembly election had already been held after the April 1985 election in which the third respondent was returned.

In the course of the submissions, counsel for the third respondent also stated that he relied neither on common law power nor equity but rather on what he termed 'common sense' in that relying on *Carter & Anor* v *Mills*[1] and *Marshall* v *James*,[2] the present petition had abated or dropped by reason of the dissolution of the State Legislative Assembly on 26 February 1986.

For the petitioner it was contended that the trial of an election petition was in the exclusive domain of the election judge, that the intention of the legislature was to keep alive the hearing of election petitions until they were finally disposed of, that *Carter & Anor* v *Mills*,[1] ought not to be applied and that unless legislation expressly so provides, an election petition would not abate or drop in the event of the dissolution of the Legislative Assembly.

No statutory provision for abatement of petition on dissolution of Assembly

Challenge of an election to the State Legislative Assembly has to be by way of an election petition presented to the High Court having jurisdiction where the election was held (art 118 of the Federal Constitution) and the petition has to be tried by either the Chief Justice or by a judge of the High Court nominated by the Chief Justice for the purpose (s 33(1) of the Election Offences Act 1954). Section 35 of the said 1954 Act enumerates the reliefs that a petitioner may claim which include declarations that the election is void and that the person (in this petition the third respondent) was not duly elected, which are what the petitioner in this petition claims. Section 42 provides that the procedure and practice on election petitions shall be regulated by rules of court which include the Election Petition Rules 1954 contained in the second schedule to the said 1954 Act. Section 36 requires, inter alia, the election judge, at the conclusion of the trial of an election petition, to determine whether the candidate whose election is complained of was duly elected or whether the election was void and to certify such determination to the appropriate authority (in the instant case, the Election Commission). Provisions relating to the abatement or otherwise of an election petition are contained in rr 27 to 29 of the Election Petition Rules 1954. By r 27(1) an election petition shall abate on the death of a sole petitioner or of the survivor of several petitioners, and r 28 contained provisions for substitution of an appropriate person as petitioner and the procedure relating thereto. Rule 29 expressly states that a petition shall not abate but shall continue whether or not anyone applies to be admitted as a respondent if before the trial of the petition the respondent dies or resigns or gives notice that he does not intend to oppose the petition. It will be seen from the above that once an election petition is presented to the High Court, it will not necessarily abate or fail by reason of the death of the petitioner or any of the respondents or by their ceasing to have any further interest in it. Any person who might have been a petitioner can, on application, be a substitute and continue the petition inspite of the death of the petitioner or the respondent to the petition and on the original parties failing to prosecute it. From the above provisions and from the necessity of leave of an election judge to withdraw a petition as stipulated in r 21(1), it appears clear that the intention is to prevent the election process on which the democratic system of government is based from being abused or misused by any candidate and to ensure that trial of an election petition will not be frustrated by collusion between parties to the petition or by their deaths.

As may also be seen from the above, the law relating to abatement of election petitions is contained in the Election Petition Rules 1954. There is, however, no provision therein providing for the abatement of an election petition by reason of the dissolution of the Legislative Assembly. Nor is there such a provision in other rules of court, eg the Rules of the High Court 1980 or the Rules of the Supreme Court 1980.

Section 36 of Election Offences Act 1954 – dire consequences?

For the third respondent it was argued that if the petition were held not to have been abated and if the reliefs of the petitioner were subsequently allowed (which, of course,

is a matter to be determined only after trial, if any, of the petition on merit), dire or serious consequences would follow, in that, it was contended, s 36 of the Election Offences Act 1954 made it mandatory that the Election Commission had to give notice of election which the Election Commission would not be able to do and a by-election consequent thereupon could not be held in view of the fact that a fresh election had already been held and that the Legislative Assembly seat for the constituency of Moyog had already been filled. With respect, I am unable to agree. Having regard to the word 'or' appearing between the word 'altered', and the words 'the Election Commission ...' and having regard to the phrase 'as the case may require' subsequently appearing, all in the said s 36, I am of the view that the giving of the notice of election thereunder is not of such mandatory nature as counsel submitted it to be. The word and the phrase are clear and unambiguous and must be given their ordinary and natural meaning. In my view, the expression 'as the case may require' means as the situation which confronts or is being dealt with may require. Furthermore, under s 12(3) of the Elections Act 1958, the Election Commission would have to establish that a vacancy exists before issuing a writ of by-election. See also the Elections (Conduct of Elections) Regulations 1981 First Schedule Form 2A (notice to hold by-election) wherein vacation of a seat in question is to be stated. To my mind it is clear that no writ for by-election in a constituency will be issued unless vacancy for the particular constituency occurs.

English cases: Carter & Anor v *Mills, Marshall* v *James*; *powers of election courts*

Counsel for the third respondent relied on *Carter & Anor* v *Mills*[1] for the contention that the petition abated on the dissolution of the State Legislative Assembly. In *Carter's* case, as reported, the petitioner applied for the return of the deposit which he had paid by way of security for costs, the parliament having been dissolved before the day fixed for the hearing of the petition. The respondent consented to the application. In his judgment Coleridge CJ spoke of the old parliamentary practice. He said:

> I am of opinion that this application should be granted. The Queen having been pleased to dissolve Parliament, of which fact the court must take judicial cognizance, a case has arisen not expressly provided for in the Act; and under these circumstances we must guide our proceedings by the old parliamentary practice on the subject. It is common knowledge, that according to the old practice the petition abated or dropped in such a case. We think the result is the same now, and that we therefore have authority, and ought to make an order for the return of the deposit.
>
> Keating J concurred and said:
> The effect of the dissolution, as it seems to me, is to cause the petition to drop.

Marshall v *James*[2] decided four months later afforded Lord Coleridge CJ an opportunity to explain further the reasons for the decision in *Carter & Anor* v *Mills*.[1] He said (p 715):

> We were pressed with our decision in the Exeter Case, *Carter* v *Mills*. The ground of the decision there was, that, inasmuch as nothing had been done but merely lodging the petition at the time the dissolution of parliament took place, and nothing more could be done upon it, we thought, looking at s 26 of the Parliamentary Elections Act 1868, and at the general principles of election law as administered by election committees in a matter upon which the Rules of Court were silent, and as the Act contains a provision for the withdrawal of a petition with the consent of the court, we were justified in saying that the petition dropped by reason of the dissolution of parliament, and consequently that the petitioner was entitled to have his deposit returned to him.

It therefore appears clear from the above that the decision in *Carter & Anor* v *Mills*[1] was grounded to an extent upon (1) the practice of the Committees of Parliament to which election petitions were formerly used to be referred and (2) upon the then prevailing s 26 of the Parliamentary Elections Act 1868 which reads:

> Until Rules of Court have been made in pursuance of this Act, and so far as such Rules do not extend, the Principles, Practice, and Rules on which Committees of the House of Commons have heretofore acted in dealing with Election Petitions shall be observed so far as may be by the Court and Judge in the Case of Election Petitions under this Act.

Brett J in *Marshall* v *James*[2] speaking of *Carter & Anor* v *Mills*[1] also observed that in the latter case 'the court held that, where parliament was dissolved before the day fixed for hearing of a petition, *by analogy to the old practice of election committees the petition dropped*' (p 716). (Emphasis added). As a passing remark, it may be of interest to note that Brett J did not appear quite affirmative about abatement of the petition through dissolution, he said (p 716): 'It may be that a dissolution taking place before trial may abate the petition.'

The Parliamentary Elections Act 1868 (UK) also established the procedure whereby election petitions were tried by election courts instead of by committees of the House of Commons. In other words the right to try election petitions was removed from the committees and vested in the election courts.

The present equivalent in the English law of s 26 (repealed) of the Parliamentary Elections Act 1868 quoted above is contained in s 137(2) of the Representation of the People Act 1949 which provides, inter alia, that subject to the provisions of the Act and of the rules made under it, the principles, practice and rules on which committees of the House of Commons used to act in dealing with election petitions shall be observed, so far as may be. *Carter & Anor* v *Mills*[1] might still be good law in England; that is not for me to decide.

In our country Malaysia, however, so far as I am aware, we did not experience what the English underwent prior to 1868. Our election law does not contain any provision equivalent to the English s 26 quoted above or s 137(2) of the English 1949 Act mentioned above. The Election Commission in our country all along has been continuing to exist and function despite the dissolutions of parliament and state legislative assemblies. And s 42 of the Election Offences Act 1954 provides that the procedure and practice on election petitions are to be regulated by rules of court (which means rules made by the Rules Committee) and by the Election Petitions Rules 1954. For the above reasons, the decision in *Carter & Anor* v *Mills*,[1] in my opinion, has no application having regard to the statute law and circumstances prevailing in our country. The old parliamentary practice causing an election petition to drop on dissolution of parliament while the petition was pending ought not, in my opinion, to apply since our procedure and practice are governed and regulated by the Elections Offences Act 1954, the Election Petition Rules 1954 and rules of court as stated in the said 1954 Act. On this issue, I consider the Indian case of *Sheo Sadan Singh* v *Mohan Lal Gautam*[4] persuasive. The judgment at p 411 para 10 states:

> The law relating to withdrawal and abatement of election petitions is exhaustively dealt with in Chapter IV of Part VI of the Act. In deciding whether a petition has abated or not we cannot travel outside the provisions contained in that Chapter. There is no provision providing for the dropping of an election petition for any reason other than those mentioned therein. The Act does not provide for the abatement of an election petition either when the returned candidate whose election is challenged resigns or when the assembly is dissolved. As the law relating to abatements and withdrawal is exhaustively dealt with in the Act itself no reliance can be placed on the provisions of the Civil Procedure Code nor did the learned Counsel for the respondent bring to our notice any provision in the Civil Procedure Code under which the election petition can be held to have abated.

The case of *Yong Kuan Teik* v *Devan Nair*[5] also suggests that an election judge would have no power to dispose of an election petition unless authorised by provisions in the Election Offences Act or the rules made or authorised thereunder. At p 165 after commenting on the legislative provisions for withdrawal and abatement of election petitions, Thomson LP said (p 165):

> That strongly supports the view that under our Ordinance and rules once an election petition has come into existence it can only be disposed of in some way which the legislation itself permits and, that any rules, written or conventional, relating to the exercise by the court of its ordinary civil jurisdiction are to be disregarded. On this basis the circumstances in which a petition can be disposed of are clear. Normally it will be disposed of by the election judge making his report upon it in accordance with the provisions of the Ordinance. Apart from that the only specific provisions which enable it to be disposed of are those relating to withdrawal and abatement subject to supervision of the court and the provision of r 12 enabling the petition to be struck out if security for costs is not given within the prescribed time. Clearly, too, the provision of r 16 that on the expiration of time limited for making petitions 'the petition shall be deemed to be at issue' indicates the point of time at which the petition becomes incapable of being disposed of except in one of the ways which have been mentioned.
>
> It would therefore follow that the trial judge had no power to strike out the petition for non-compliance with r 15 because there was nothing in the Ordinance or the rules which gave him power to do so.

The case of *Loknath Padhan* v *Birendra Kumar Sahu*[6] was referred to. Strictly, that case was not on question of abatement. Bhagwati J said at p 533:

> But the question before us is not whether the appeal in the present case abated on the dissolution of the Orissa Legislative Assembly. That is not the contention raised on behalf of the respondent. The respondent does not say that the appeal has abated and must, therefore, be dismissed. What the respondent contends is that in view of the dissolution of the Orissa Legislative Assembly, it has become academic to decide the appeal and hence we should decline to hear it. That is a wholly different contention which is not covered by the observations quoted above.

Ensuing consequences – fairness and purity of elections

Counsel for the third respondent submitted that possibly only petitions alleging corrupt practices would abate in the event of dissolution of the legislative assembly, the reason seemingly being that a person found guilty of corrupt practice would be barred from contesting in future elections. The Indian case of *Shivdev Singh* v *Dara Singh*[3] was cited. In that case the judgment at pp 500-501 reads:

> Through our own decision in the other petition and through the President's Proclamation the necessity for making a declaration of the election being void did not remain but still the petitioner could insist that a finding about corrupt practices used in the election should be given which would help him to vindicate his stand that he lost in the election to the first respondent due to the resort by the latter to corrupt or illegal practices and that the election would have been liable to be set aside even if there had not existed a technical flaw like improper rejection of a nomination or there had not been the supervention by the President's Proclamation. This right of the petitioner was implicit in his making the petition grounded upon corrupt practices as the law permitted him to do and he has the right to have an adjudication of the petition to the extent necessary to secure him the reliefs for which he made it. By what has already taken place, he has not secured a finding about commission of unfair practices – the proof of which would not only vindicate his honour but would further give him the satisfaction of seeing his opponent in the election disqualified under s 140 of the Act and so getting rid of his opposition in the next election.

In *Loknath Padhan* v *Birendra Kumar Sahu*,[6] Bhagwati J with reference to *Sheo Sadan Singh* v *Mohan Lal* said (pp 531-532):

... a preliminary objection was, therefore, raised on behalf of the respondent that the election petition had ceased to be maintainable on account of the dissolution of the Uttar Pradesh Legislative Assembly. The High Court rejected the preliminary objection but on merits it took the view that corrupt practice was not proved and accordingly dismissed the election petition. The appellant thereupon referred an appeal to this court and in the appeal also the same preliminary objection was repeated on behalf of the respondent. This court negatived the preliminary objection. Hedge J speaking on behalf of the court emphasised that the charge against the respondent was of corrupt practice and pointed out that if the contention of the appellant that the respondent was guilty of corrupt practice was found to be true, then not only his election would be declared void but he would also be liable to incur certain electoral disqualification, and therefore, in the interest of purity of elections it was necessary that 'those who had corrupted the course of an election are dealt with in accordance with law', and this purpose would stand defeat if the election petition were held to become infructuous on the dissolution of the Assembly.

Shortly thereafter, the judgment went on (p 532):

It will be seen that the emphasis in this decision was on the fact that the charge against the respondent was of corrupt practice and it was in this context that the court held that where corrupt practice is alleged against the respondent in an election petition, the dissolution of the legislature during the pendency of the election petition does not render it infructuous. We fail to see how the ratio of this decision can have any application in the present case. Here there is no charge of any corrupt practice against the respondent. The only ground on which the election of the respondent is sought to be invalidated is that he was disqualified at the date of nomination under s 9A. This disqualification does not involve any act corrupting the course of an election. It has no other consequence than that of making the particular election void.

Another feature that may be noted in *Loknath Padhan* v *Birendra Kumar Sahu*,[6] is that there the objection was taken by the petitioner respecting the respondent's nomination and both of them took part in the election that followed. In our instant case, the objection was raised by the second and the third respondents against the nomination of the petitioner who, as a result, was barred from taking part in the election contest.

Considering the law in Sabah, and on the assumed basis that the reliefs sought in the instant petition were granted on the grounds as complained, can it be said that no consequence ensues other than making the particular election void? The answer is in the negative. Under s 8 of the Members of the Administration and the Legislative Assembly (Remuneration) Enactment 1981, a member of the State Legislative Assembly shall be entitled to such pension, gratuity or other benefits as are prescribed in the First Schedule thereto. Under para 2(1) of the said Schedule, a pension is payable on completion of 36 months of reckonable service and if the assembly is dissolved in less than 36 months, an assemblyman shall be deemed to have rendered 36 months' reckonable service (see proviso to para 2 of the said Schedule). Subject to certain limitations, the pension shall be for life (para 2(3) of the said Schedule). His spouse and children may also be benefitted. It has not been disputed that the third respondent is receiving pension. Public revenue therefore is involved. Just as a charge of corrupt practice, if proved, entails certain electoral disqualifications in the future, practical consequences are clearly involved should the petitioner in the instant petition before us succeed. It cannot be said that it would have no consequences operating in future or that it would not hurt the third respondent. Just as the purity of election must be maintained, so, in my opinion, must the statutorily-provided benefits be guarded by ensuring that they are given only to those who justly win in election process that has been properly and fairly conducted.

For the third respondent reference was made to s 33(1) and s 34 of the Houses of Parliament (Privileges and Powers) Ordinance 1952 and s 6 of the Legislative Assembly (Privileges, Immunities and Powers) Enactment 1963. I find them of no assistance to the issue in this preliminary objection. Principally, they deal with the holding, enjoyment and exercise of privileges, immunities and powers by the House or the Assembly and its members. In our instant petition, the election of the third respondent to the Legislative Assembly is disputed, and the immediate point in issue in this objection is the question of abatement. As for the said 1952 Ordinance, the additional ground of irrelevancy is that it applies to the House of Parliament as opposed to the Sabah State Legislative Assembly.

Counsel for the third respondent also cited the cases of *Re Perting Timor Election (No 2)*,[7] *Tunku Abdullah* v *Ali Amberan*[8] and *Danson Gaban* v *Zulkifle bin Majun & Ors*[9]. They dealt with the question of appeals of election cases and are hardly of any assistance to the issue before us.

For the above reasons and in the interest of justice, equity and good conscience, this petition, in my opinion, does not abate and as the nominated election judge, I have the jurisdiction to try it. I hold that the preliminary objection fails.

Preliminary objection dismissed.

Solicitors: *Luping Koding Kurup & Williamson*; *Richard Malanjum & Co.*

Reported by *Yap Shao Sin*